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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,001	10/12/2000	Jeffery D. Arnett	30488-1016	7673
30542	7590	10/21/2005		
FOLEY & LARDNER P.O. BOX 80278 SAN DIEGO, CA 92138-0278			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/689,001

Applicant(s)

ARNETT ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-10, 12, 26, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-9, 12, 26, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-5, 11, 13-25, 27 and 28 have been canceled. Claims 6-10, 12, 26, 29 and 30 are pending.

Applicant's election of the specie of Group I (Fig. 6-9) and claims 6-9, 12, 26, 29 and 30 in the reply filed on January 18, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 10 stands withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 18, 2005.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-9, 12, 26 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Seitz et al. (Seitz).

Seitz discloses a latch system for a container, the container including a first section and a second section, the latch comprises a latch pin (rod 21) mounted on the first section (cover 12), a deflectable member (one or both of the bushings 23) and a latch (L member 14) pivotally coupled to the latch pin so that the deflectable member is positioned between the latch pin and the latch, the latch removably engages the second section (receptacle 11), the deflectable member is configured to absorb relative compression movement or movement of the lid downwardly which will move the latch pin downwardly with respect to the receptacle 11 which

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remains relatively stationary such as when the horizontal leg 15 of the latch is depressed or pushed downwardly on in order to release the engagement of complementary projections 26 and 28.

Re claim 29, deflectable member (bushing 23) is comprised of plastic as stated in line 41 of column 3.

Claims 6-9, 12 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Henne, Munoz and Kushman et al. (Kushman).

Henne and Munoz are similar oven door latches. Henne discloses a latch system for a container, the container including a first section and a second section, the latch comprises a latch pin (30) mounted on the first section (body of the oven), a deflectable member (bushing 66) and a latch (20) pivotally coupled to the latch pin so that the deflectable member is positioned between the latch pin and the latch, the latch removably engages the second section (oven door 34), the deflectable member is configured to absorb relative compression movement or movement of the lid toward the oven body which will move the latch (20) with respect to the oven body and the pin 30 which are relatively stationary. Munoz structure is similar and would similarly read on the claims.

Kushman discloses a latch system for a container, the container including a first section and a second section, the latch comprises a latch pin (axle 39) mounted on the first section (storage bin or vessel body), a deflectable member (bushing 41) and a latch (34) pivotally coupled to the latch pin so that the deflectable member is positioned between the latch pin and the latch, the latch removably engages the second section (roof 25), the deflectable member is configured to absorb relative compression movement or movement of the roof downwardly

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which will move the latch downwardly with respect to the vessel body and the latch pin (axle 39).

Prior Art admission:

Applicant admits that plastic, rubber and metal as well known materials for bushings.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz, Henne, Munoz and Kushman.

Seitz discloses the plastic bushing material. Seitz discloses the invention except for the rubber and metal material. Henne, Munoz and Kushman do not teach a material for the bushing. Applicant admits that plastic, rubber and metal as well known materials for bushings. Also, there is a lack of criticality to the material specified as evidenced by applicant's disclosure of plastic, rubber and metal as acceptable materials. It would have been obvious to provide either plastic, rubber or metal as the material of the bushing in order to provide a material with the specific quality or qualities desired, plastic and rubber are known for easy moldability, self-lubricating, anti-friction, noise-reduction, maintenance reduction and strength in absorbing compression and metal is known for high yield strength, durability and strength in absorbing compression.

Applicant's arguments filed August 1, 2005 have been fully considered but they are not persuasive. Applicant mentions that the latch system of Seitz is made of rigid material. While

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this is true, there is no indication that the bushing specifically is rigid material. A plastic material is disclosed for the bushing of Seitz. Nothing precludes the bushing from being a deflectable member, that is, a member capable of deflection or movement. Nothing precludes the bushing from absorbing relative compression movement. The compressive forces are inherently present by the users manipulation of the latch. These forces compresses the bushing. Eventhough, the compression of the bushing may be minimal or minor when compared to a more elastic or resilient bushing material. The slidable engagement mentioned in the rebuttal of Munoz doesn't preclude compression movement and the rotational surface of Kushman doesn't preclude compression movement.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on Tu-F 6:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc